

SENATE BILL No. 174

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-34-1; IC 35-42-1; IC 35-50-2-9.

Synopsis: Fetal viability. Provides that a fetus that is at least 20 weeks of age is presumed to have attained viability. Makes conforming amendments.

Effective: July 1, 2004.

Waterman

January 6, 2004, read first time and referred to Committee on Judiciary.

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Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 174

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-34-1-0.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2004]: **Sec. 0.5. (a) For purposes of this article, a fetus that is at**
4 **least twenty (20) weeks of age (from the first day of the mother's**
5 **most recent menstrual cycle) is presumed to have attained viability.**

6 **(b) If a fetus is presumed to have attained viability under**
7 **subsection (a), no additional medical evaluation is required to**
8 **establish the fetus's viability.**

9 SECTION 2. IC 35-42-1-1, AS AMENDED BY P.L.17-2001,
10 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2004]: Sec. 1. A person who:

- 12 (1) knowingly or intentionally kills another human being;
13 (2) kills another human being while committing or attempting to
14 commit arson, burglary, child molesting, consumer product
15 tampering, criminal deviate conduct, kidnapping, rape, robbery,
16 or carjacking;
17 (3) kills another human being while committing or attempting to



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commit:

(A) dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1);

(B) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);

(C) dealing in a schedule IV controlled substance (IC 35-48-4-3); or

(D) dealing in a schedule V controlled substance; or

(4) knowingly or intentionally kills a fetus that:

(A) has attained viability (as defined in IC 16-18-2-365); or

(B) is at least twenty (20) weeks of age (from the first day of the mother's most recent menstrual cycle);

commits murder, a felony.

SECTION 3. IC 35-42-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) A person who knowingly or intentionally:

(1) kills another human being; or

(2) kills a fetus that:

(A) has attained viability (as defined in IC 16-18-2-365); or

(B) is at least twenty (20) weeks of age (from the first day of the mother's most recent menstrual cycle);

while acting under sudden heat commits voluntary manslaughter, a Class B felony. However, the offense is a Class A felony if it is committed by means of a deadly weapon.

(b) The existence of sudden heat is a mitigating factor that reduces what otherwise would be murder under section 1(1) of this chapter to voluntary manslaughter.

SECTION 4. IC 35-42-1-4, AS AMENDED BY P.L.133-2002, SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) As used in this section, "child care provider" means a person who provides child care in or on behalf of:

(1) a child care center (as defined in IC 12-7-2-28.4); or

(2) a child care home (as defined in IC 12-7-2-28.6);

regardless of whether the child care center or child care home is licensed.

(b) As used in this section, "fetus" means a fetus that:

(1) has attained viability (as defined in IC 16-18-2-365); or

(2) is at least twenty (20) weeks of age (from the first day of the mother's most recent menstrual cycle).

(c) A person who kills another human being while committing or attempting to commit:

(1) a Class C or Class D felony that inherently poses a risk of

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serious bodily injury;

(2) a Class A misdemeanor that inherently poses a risk of serious bodily injury; or

(3) battery;

commits involuntary manslaughter, a Class C felony. However, if the killing results from the operation of a vehicle, the offense is a Class D felony.

(d) A person who kills a fetus while committing or attempting to commit:

(1) a Class C or Class D felony that inherently poses a risk of serious bodily injury;

(2) a Class A misdemeanor that inherently poses a risk of serious bodily injury; or

(3) battery;

commits involuntary manslaughter, a Class C felony. However, if the killing results from the operation of a vehicle, the offense is a Class D felony.

(e) If:

(1) a child care provider recklessly supervises a child; and

(2) the child dies as a result of the child care provider's reckless supervision;

the child care provider commits involuntary manslaughter, a Class D felony.

SECTION 5. IC 35-50-2-9, AS AMENDED BY P.L.147-2003, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) The state may seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging, on a page separate from the rest of the charging instrument, the existence of at least one (1) of the aggravating circumstances listed in subsection (b). In the sentencing hearing after a person is convicted of murder, the state must prove beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances alleged. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is a mentally retarded individual.

(b) The aggravating circumstances are as follows:

(1) The defendant committed the murder by intentionally killing the victim while committing or attempting to commit any of the following:

(A) Arson (IC 35-43-1-1).

(B) Burglary (IC 35-43-2-1).

(C) Child molesting (IC 35-42-4-3).

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- 1 (D) Criminal deviate conduct (IC 35-42-4-2).
- 2 (E) Kidnapping (IC 35-42-3-2).
- 3 (F) Rape (IC 35-42-4-1).
- 4 (G) Robbery (IC 35-42-5-1).
- 5 (H) Carjacking (IC 35-42-5-2).
- 6 (I) Criminal gang activity (IC 35-45-9-3).
- 7 (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
- 8 (2) The defendant committed the murder by the unlawful
- 9 detonation of an explosive with intent to injure person or damage
- 10 property.
- 11 (3) The defendant committed the murder by lying in wait.
- 12 (4) The defendant who committed the murder was hired to kill.
- 13 (5) The defendant committed the murder by hiring another person
- 14 to kill.
- 15 (6) The victim of the murder was a corrections employee,
- 16 probation officer, parole officer, community corrections worker,
- 17 home detention officer, fireman, judge, or law enforcement
- 18 officer, and either:
- 19 (A) the victim was acting in the course of duty; or
- 20 (B) the murder was motivated by an act the victim performed
- 21 while acting in the course of duty.
- 22 (7) The defendant has been convicted of another murder.
- 23 (8) The defendant has committed another murder, at any time,
- 24 regardless of whether the defendant has been convicted of that
- 25 other murder.
- 26 (9) The defendant was:
- 27 (A) under the custody of the department of correction;
- 28 (B) under the custody of a county sheriff;
- 29 (C) on probation after receiving a sentence for the commission
- 30 of a felony; or
- 31 (D) on parole;
- 32 at the time the murder was committed.
- 33 (10) The defendant dismembered the victim.
- 34 (11) The defendant burned, mutilated, or tortured the victim while
- 35 the victim was alive.
- 36 (12) The victim of the murder was less than twelve (12) years of
- 37 age.
- 38 (13) The victim was a victim of any of the following offenses for
- 39 which the defendant was convicted:
- 40 (A) Battery as a Class D felony or as a Class C felony under
- 41 IC 35-42-2-1.
- 42 (B) Kidnapping (IC 35-42-3-2).

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(C) Criminal confinement (IC 35-42-3-3).

(D) A sex crime under IC 35-42-4.

(14) The victim of the murder was listed by the state or known by the defendant to be a witness against the defendant and the defendant committed the murder with the intent to prevent the person from testifying.

(15) The defendant committed the murder by intentionally discharging a firearm (as defined in IC 35-47-1-5):

(A) into an inhabited dwelling; or

(B) from a vehicle.

(16) The victim of the murder was pregnant and the murder resulted in the intentional killing of a fetus that:

(A) has attained viability (as defined in IC 16-18-2-365); or

(B) is at least twenty (20) weeks of age (from the first day of the mother's most recent menstrual cycle).

(c) The mitigating circumstances that may be considered under this section are as follows:

(1) The defendant has no significant history of prior criminal conduct.

(2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.

(3) The victim was a participant in or consented to the defendant's conduct.

(4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.

(5) The defendant acted under the substantial domination of another person.

(6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.

(7) The defendant was less than eighteen (18) years of age at the time the murder was committed.

(8) Any other circumstances appropriate for consideration.

(d) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any

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other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and clemency. The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty or life imprisonment without parole should be imposed, the jury must find at least one (1) aggravating circumstance beyond a reasonable doubt as described in subsection (k) and shall provide a special verdict form for each aggravating circumstance alleged. The defendant may present any additional evidence relevant to:

(1) the aggravating circumstances alleged; or

(2) any of the mitigating circumstances listed in subsection (c).

(e) For a defendant sentenced after June 30, 2002, except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:

(1) the death penalty; or

(2) life imprisonment without parole;

only if it makes the findings described in subsection (l). If the jury reaches a sentencing recommendation, the court shall sentence the defendant accordingly. After a court pronounces sentence, a representative of the victim's family and friends may present a statement regarding the impact of the crime on family and friends. The impact statement may be submitted in writing or given orally by the representative. The statement shall be given in the presence of the defendant.

(f) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(g) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

(1) sentence the defendant to death; or

(2) impose a term of life imprisonment without parole;

only if it makes the findings described in subsection (l).

(h) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

(i) If a person sentenced to death by a court files a petition for

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post-conviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider the petition. If a court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional post-conviction relief. The attorney general shall answer the petition for post-conviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without merit, the court may dismiss the petition within ninety (90) days without conducting a hearing under this subsection.

(j) A death sentence is subject to automatic review by the supreme court. The review, which shall be heard under rules adopted by the supreme court, shall be given priority over all other cases. The supreme court's review must take into consideration all claims that the:

(1) conviction or sentence was in violation of the:

(A) Constitution of the State of Indiana; or

(B) Constitution of the United States;

(2) sentencing court was without jurisdiction to impose a sentence; and

(3) sentence:

(A) exceeds the maximum sentence authorized by law; or

(B) is otherwise erroneous.

If the supreme court cannot complete its review by the date set by the sentencing court for the defendant's execution under subsection (h), the supreme court shall stay the execution of the death sentence and set a new date to carry out the defendant's execution.

(k) A person who has been sentenced to death and who has completed state post-conviction review proceedings may file a written petition with the supreme court seeking to present new evidence challenging the person's guilt or the appropriateness of the death sentence if the person serves notice on the attorney general. The supreme court shall determine, with or without a hearing, whether the person has presented previously undiscovered evidence that undermines confidence in the conviction or the death sentence. If necessary, the supreme court may remand the case to the trial court for an evidentiary hearing to consider the new evidence and its effect on the person's conviction and death sentence. The supreme court may not make a determination in the person's favor nor make a decision to remand the case to the trial court for an evidentiary hearing without

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1 first providing the attorney general with an opportunity to be heard on
2 the matter.

3 (l) Before a sentence may be imposed under this section, the jury,
4 in a proceeding under subsection (e), or the court, in a proceeding
5 under subsection (g), must find that:

6 (1) the state has proved beyond a reasonable doubt that at least
7 one (1) of the aggravating circumstances listed in subsection (b)
8 exists; and

9 (2) any mitigating circumstances that exist are outweighed by the
10 aggravating circumstance or circumstances.

11 **SECTION 6. [EFFECTIVE JULY 1, 2004] IC 16-34-1-0.5, as**
12 **added by this act, and IC 35-42-1-1, IC 35-42-1-3, IC 35-42-1-4,**
13 **and IC 35-50-2-9, all as amended by this act, apply only to offenses**
14 **committed after June 30, 2004.**

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